

Message Text

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ORIGIN EB-08

INFO OCT-01 EA-10 ISO-00 TRSE-00 STR-07 COME-00 AID-05
CIAE-00 FRB-03 INR-10 NSAE-00 ICA-11 XMB-02
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TREASURY:M GADBAW
TREASURY:P EHRENHAFT
STR:W BARREDA

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FM SECSTATE WASHDC
TO AMEMBASSY TOKYO PRIORITY

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E.O. 11652:N/A

TAGS:ETRD, EIND, JA

SUBJECT:BACKGROUND INFORMATION FOR TREASURY STEEL TASK
FORCE

REF: TOKYO 8855

1. THIS CABLE IS DESIGNED TO PROVIDE SOME OF THE INFORMATION REQUESTED IN REFTEL. OTHER DATA MAY FOLLOW; TASK FORCE SHOULD REALIZE, HOWEVER, THAT IT IS UNLIKELY THAT IT WILL RECEIVE AS MUCH INFORMATION AS IT DESIRES. WE SUGGEST TASK FORCE MEMBERS OFFER TO SEND JAPANESE, THROUGH OUR EMBASSY, ANY INFORMATION JAPANESE DESIRE, SUBSEQUENT TO LIMITED OFFICIAL USE

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RETURN OF TASK FORCE TO WASHINGTON.

2. APPROACH SUGGESTED BY TASK FORCE REGARDING CONFIDENTIALITY OF DATA IT RECEIVES (PARA 3, REFTEL) IS EXCELLENT. JAPANESE INTERESTS MIGHT BE FURTHER PROTECTED, AND OUR INTEREST IN OBTAINING DETAILED INFORMATION MIGHT THEREFORE BE ENHANCED, IF THEIR LETTER TO US EXPLICITLY STATED THAT

PROTECTION OF CONFIDENTIAL DATA IS NOT SIMPLY A REQUEST, BUT A CONDITION OF RELEASE OF THE DATA. AS JAPANESE KNOW, HOWEVER, USG CANNOT GUARANTEE THAT DATA IN ITS POSSESSION WILL REMAIN BEYOND THE REACH OF DISCOVERY PROCEEDINGS IN

3. TASK FORCE SHOULD ALSO STRESS THAT JAPANESE CAN PROTECT "BUSINESS CONFIDENTIAL" INFORMATION BY AGGREGATING AND AVERAGING IT BEFORE MAKING IT AVAILABLE TO US.

4. RESULT OF DISCOVERY REQUEST IN DAVIS-WALKER CASE WAS FRUSTRATION OF ADMINISTRATION'S BEST EFFORTS TO WITHHOLD FROM COURT DATA PROVIDED BY JAPANESE. HOWEVER, WE DOUBT THAT SUCH DATA HAS BEEN COMPROMISED, OR THAT ITS "RELEASE" TO THE COURT CAN PREJUDICE JAPANESE INTERESTS, SINCE JUDGE HAS ORDERED THAT ONLY HE, DAVIS-WALKER'S ATTORNEYS, AND THREE "OUTSIDE EXPERTS" (I.E., NOT EMPLOYEES OF DAVIS-WALKER) MAY HAVE ACCESS TO THE DOCUMENTS INVOLVED. ("OUTSIDE EXPERTS" ARE AN ACCOUNTANT AND TWO ECONOMISTS WHO ADVISE JUDGE ON INTERPRETATION OF THE DOCUMENTS.) VIOLATION OF JUDGE'S ORDER IS SUBJECT TO CONTEMPT OF COURT CITATION AND IMPRISONMENT. WHILE WE RECOGNIZE THAT THESE RESTRICTIONS ARE NOT SEEN BY OFFICIALS OF JAPANESE GOVERNMENT AND STEEL COMPANIES AS AIRTIGHT, TASK FORCE SHOULD ARGUE THAT, IN CONTEXT OF U.S. LEGAL SYSTEM, THE RESTRICTIONS PROVIDE PROTECTION FOR JAPANESE INTERESTS TO THE FULLEST EXTENT ALLOWED UNDER US LAW, AND GIVEN IN LIMITED OFFICIAL USE

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COMPARABLE CIRCUMSTANCES TO DOMESTIC COMPANIES. (NOTE, HOWEVER, THAT PROCEDURES SUGGESTED IN PARA 3 REFTEL ARE NOT IDENTICAL TO THOSE OF DAVIS-WALKER; THEY ARE EVEN MORE PROTECTIVE OF JAPANESE INTERESTS.)

5. PARA 3 OF REFTEL MAY REFLECT CONFUSION ABOUT DIFFERENCE BETWEEN DISCOVERY PROCEEDINGS AND REQUESTS FOR DATA UNDER FREEDOM OF INFORMATION ACT (FOIA). AS A GENERAL PROPOSITION, IT IS MUCH EASIER TO WITHHOLD INFORMATION REQUESTED UNDER FOIA THAN IN DISCOVERY PROCEEDINGS. FOIA NORMALLY IS NOT INVOKED IN LITIGATION. UNDER FOIA, EXECUTIVE BRANCH AGENCIES HAVE GROUNDS FOR DENYING ACCESS TO EIGHT CATEGORIES OF INFORMATION; ONE SUCH CATEGORY IS INFORMATION PROVIDED IN CONFIDENCE BY A FOREIGN GOVERNMENT. PRIOR TO BRINGING COURT CASE, DAVIS WALKER DID REQUEST DOCUMENTS UNDER FOIA; SOME WERE RELEASED, BUT ALL THOSE WHICH CONTAINED INFORMATION PROVIDED BY JAPANESE GOVERNMENT WERE WITHHELD FOR THAT REASON. UNDER DISCOVERY PROCEEDINGS, THE JUDGE MAKES THE DETERMINATION ON ACCESS, AND IMPOSES RESTRICTIONS ON ACCESS AS HE DEEMS APPROPRIATE, AFTER LEARNING VIEWS OF PARTIES INVOLVED.

6. RE PARA 4 REFTTEL: LATEST INFORMATION ON DAVIS-WALKER
WAS SENT TO EMBASSY IN STATE 107554 ON APRIL 27.
SITUATION DESCRIBED THEREIN IS UNCHANGED. FURTHER, EACH
DEVELOPMENT IN EACH DUMPING CASE HAS BEEN REPORTED TO
EMBASSY AND SHOULD BE AVAILABLE IN EMBASSY FILES.
SUGGEST TASK FORCE CONSULT EMBASSY PERSONNEL FOR LATEST

INFORMATION ON THESE CASES.

7. JAPANESE EMBASSY WASHINGTON HAS FOLLOWED ANTIDUMPING
PROCEEDINGS AND DAVIS WALKER CASE CLOSELY; WE DOUBT GOJ
IS UNINFORMED ON THESE MATTERS. VANCE

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